



Dealing with Debt: The Rules of the Road

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South Carolina Department of Consumer Affairs**

Roadmap

- SCDCA Overview
- Options for Consumers
- SC Consumer Credit Counseling Act
- Credit Repair Sidebar
- Debt Collection
- CARD Act Sidebar



SCDCA Overview

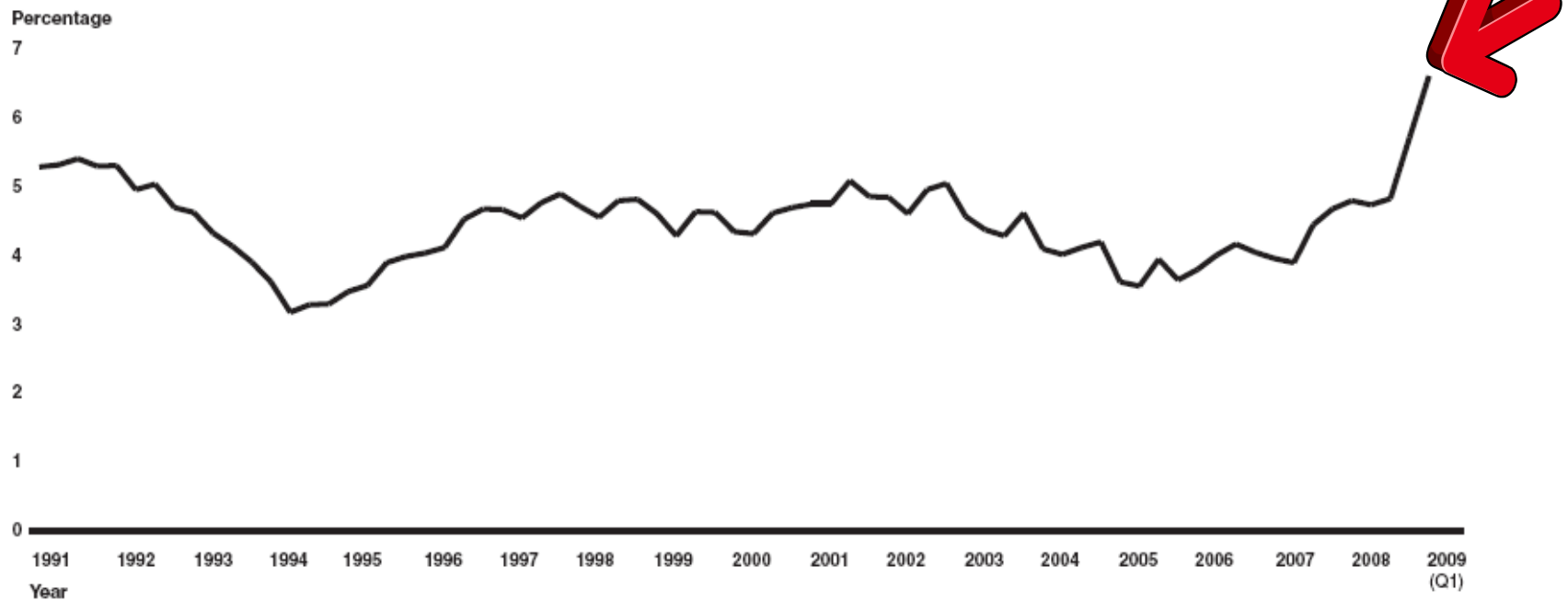
- Consumer Services & Education
- Public Information
- Consumer Advocate
- Administration
- Legal Division



GAO Credit Card Debt Collection Report

October 2009

Figure 1: Credit Card Delinquency Rates, 1991–2009 (first quarter)



Source: GAO analysis of Federal Reserve data.

Options for Consumers

Self Help

- Make a Budget... and stick to it!

Budgeting Tips

- Write it Down
- Decide if Purchase = Need? Want?
- Borrow only what you can repay
- Read and understand the credit agreement
- Shop around for Credit
 - OPT OUT : 1-888-5-OPTOUT
 - Pay all debts on time- best before interest starts!



Options for Consumers cont...

- Keep in Contact with Your Creditors
- Negotiate
- Keep Good Records
- Dispute Own Credit Report (Stay Tuned)



Options for Consumers cont...

○ Hire Help

- Debt Management, Debt Consolidation, etc.
- Credit Repair, etc.
- Debt Settlement, Debt Negotiation, Foreclosure Assistance, etc.



SC Consumer Credit Counseling Act (SCCCCA)

- Effective → December 2, 2005

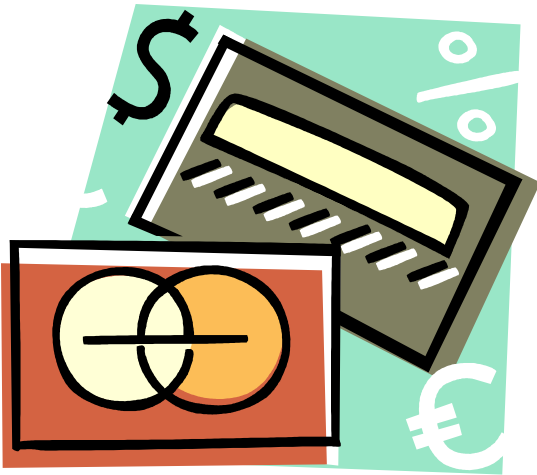
- Climate

- *Why “Consumer Credit Counseling” Act*



SCCCCA: Purpose

- Rights for Consumers when being contacted by or hiring a:



- ***Debt Management Businesses***
 - ***Credit Repair Businesses***
 - ***Debt Settlement Businesses***
- ***REGARDLESS of whether or not the business is located in South Carolina!!!***



SCCCCA: Definitions

- *“Receiving or offering to receive funds from a consumer for the purpose of distributing the funds among the consumer's creditors in full or partial payment of the consumer's debts”*
- *“Improving or offering to improve a consumer's credit record, history, or rating”*
- *“Negotiating or offering to negotiate to defer or reduce a consumer's obligations with respect to credit extended by others”*

SCCCCA: Definitions cont...

○ Debt Management Businesses

- What Do They Do?
 - *Negotiate*
 - *Consolidate*
 - *Send Payments*
- Is This Right For Me?
 - *Budget Analysis*
- Your Responsibilities
 - *Checking Up*

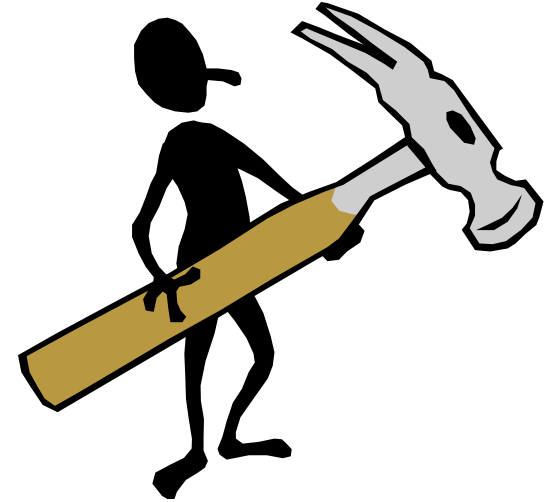


SCCCCA: Definitions cont...

○ Credit Repair Businesses

● What Do They Do?

- *Credit Report (Your help)*
- *Letters*
 - Incorrect Info
 - No one can remove information that is accurate and timely
- Credit Reporting Agencies
- Creditors



*{**More to come on Credit Repair later...**}*

SCCCCA: Definitions cont...

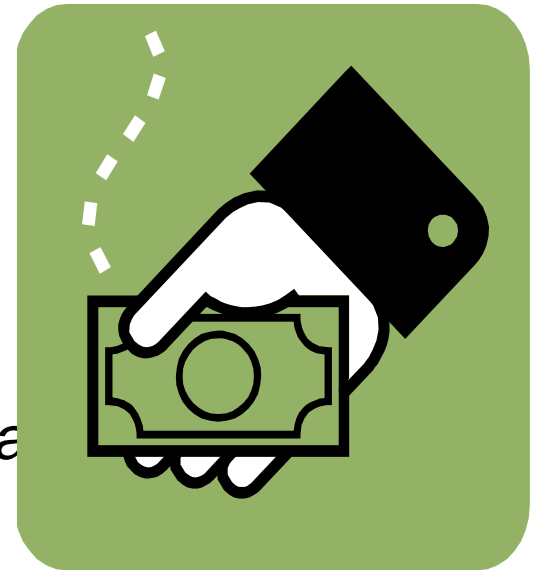
○ Debt Settlement/ Foreclosure Assistance

● What Do They Do?

- *Negotiate*
- *Send Payment?*
- *Types of Settlement/ Negotiation*

● Problems

- *Saving Money*
- *Time*
- *Creditor Action*



SCCCCA: Requirements

Be Licensed by SCDCA!!!

*[http://www.sccconsumer.gov/licensing/credit_counseling/
licensed_counselors.pdf](http://www.sccconsumer.gov/licensing/credit_counseling/licensed_counselors.pdf)*

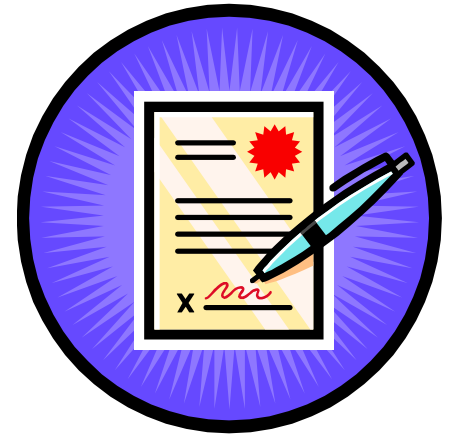
- Application for Organization and Credit Counselors
- Bond – at least \$25k
- Financial Education Session
- Budget Analysis/ Contract



SCCCCA: Contract

- Credit Counseling Organizations
MUST:

- Describe services
- Tell you how much their services cost
- Tell you how long it will take to get results
- Have a *written contract & give you a copy*



SCCCCA: Fees*



Initial Consultation Fee	\$50
Plan Enrollment Fee	\$30
Monthly Maintenance Fee	\$10 per (\$50 max)
Reinstatement Fee	\$25

**** Businesses can charge UP TO these amounts. All credit counseling businesses cannot charge every fee listed- it is dependant on the services provided.***

SCCCCA: Consumer Rights

○ Cancel

- Anytime
- 10 days notice
- Refund



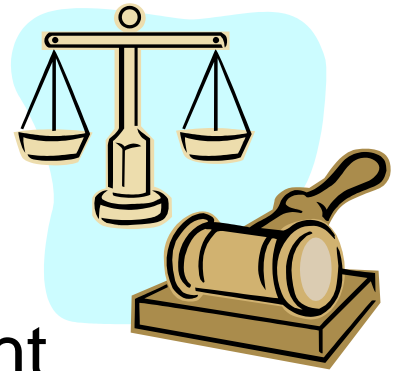
○ SUE

- 3 years
- Knew/Should have known

SCCCCA: Prohibitions

○ In General

- Referral fees
 - Situation (3rd Party)
- Ask consumer to waive right
 - Ex: Right to sue
- Fraudulent, deceptive, or misleading acts (including advertising)
- Etc.



SCCCCA cont...

- *BEWARE ~ The Scams*

We have the SECRET to lowering credit card debt!

Settle your debt for pennies on the dollar!

Lower your credit card payment guaranteed!

SCCCCA cont...

○ Common Scams

- Promises that can't be delivered
- Undisclosed fees
- Undisclosed Consequences
- Not Delivering Service

○ Don't Trust a Company If They:

- Ask you to lie
- Make Promises/ Guarantees
- Have No Written Contract / Services in Writing
- Ask for Up Front Payment



○ Complaint

- Didn't get what you paid for
 - *Didn't understand services*
 - *Said services not provided*
- Creditors are contacting me
- Unlicensed Company

○ Common Complaints

- Didn't get what you paid for
 - *Didn't understand services*
 - *Said services not provided*
- Creditors are contacting me
- Unlicensed Company

COMPLAINT FORM		SHRED THE ONLY	
C No.	ID	Cat.	Cl.
<p>Name: Consumer Complaint S.C. Dept. of Consumer Affairs P.O. Box 1672 Columbia, S.C. 29268-6702</p>		<p>Send To: 9000 Forest Drive, First Floor Myrtle Beach, SC 29577 Fax: (843) 666-6666 ext. 3333 Toll Free: 1-800-4-A-SCAR E-mail: SCDOCA@SCDORA.gov www.doconline.com/consumer</p>	
<p>(Your Name)</p> <hr/> <p>(Address)</p> <hr/> <p style="text-align: center;">(City)</p> <hr/> <p>(Yes Phone) (Office Phone) (County)</p>		<p style="text-align: center; font-size: x-small;">Give complete name and address of BUSINESS COMPLAINED AGAINST.</p> <p>(Company)</p> <hr/> <p>(Who did you deal with?)</p> <hr/> <p>(Address)</p> <hr/> <p style="text-align: center;">(Phone)</p>	
<p>1. Have you filed a complaint with any other consumer services agency? Yes _____ No _____</p> <p>2. Have you filed a summons and complaint with a magistrate's office? Yes _____ No _____</p> <p>3. Is an attorney handling your complaint? Yes _____ No _____</p> <p>If you answered yes to any of the above questions, please provide the corresponding name, address, and telephone number:</p> <hr/> <hr/> <hr/>			
<p>NOTE: ATTACH TWO COPIES OF CONTRACTS, RECEIPTS, WARRANTIES, CHECKS, BILL OF SALE, ETC.</p>			
<p>Please provide a complete explanation of your complaint:</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>			
<p>STOP This must attach two copies of any additional information.</p>			
<p>Date complained to Company _____ Response _____</p> <p>What do you want the business to do? _____</p>			
<p>PLEASE SIGN AND DATE THIS COMPLAINT.</p>			
<p style="font-size: x-small;">THE SOUTH CAROLINA FREEDOM OF INFORMATION ACT MAY REQUIRE THE DEPARTMENT OF CONSUMER AFFAIRS TO RELEASE A COPY OF YOUR COMPLAINT AS A PUBLIC RECORD.</p>			
FORM CFI-1 (REV. 2002) SAFE		YOUR SIGNATURE	

SCCCCA: Enforcement

○ Enforcement

● *Consumer Refunds*

- Approx. **\$1,_00,000** in refunds since 07/06

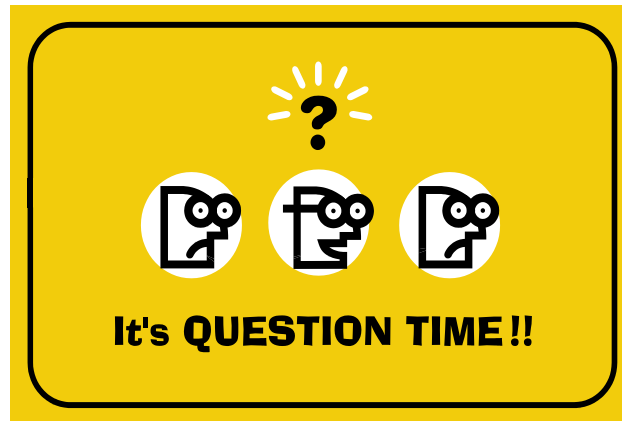
● *Lawsuits*

- Unlicensed companies (contracts & soliciting)
- Licensed company in violation

○ How does SCDCA know?



Questions on SCCCCA?



Up Next >
Credit Repair



Credit Repair

- Federal Law
 - Credit Repair Organizations Act
- Federal and State Law Working Together
 - Fair Credit Reporting Act
 - South Carolina Financial Identity Fraud & Identity Theft Protection Act

Credit Repair Organizations Act (CROA)

- Federal Law

- Fair Credit Reporting Act → Right to dispute
- CROA → Effective = 1997
- Regulates businesses that:
 - Improve consumer's credit record, history or rating OR
 - Provide advice or assistance with



- Main Enforcer = Federal Trade Commission (FTC)

CROA: Contract

○ Contract Must Contain

● ***Disclosures***

- Basics about disputing right
- Free credit reports

● ***Other***

- Written, dated & signed
- Total fees
- Description of services
- Duration of contract
- Cancellation statement



CROA: Prohibitions

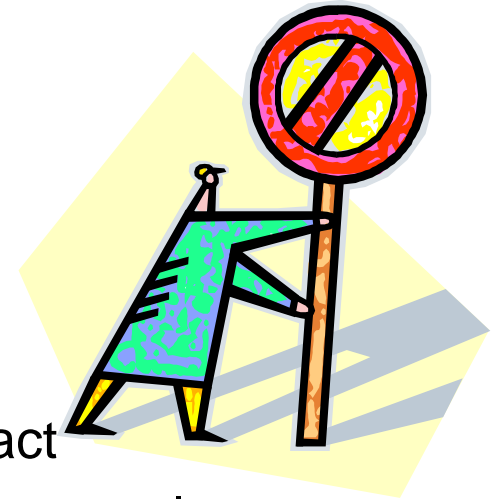
- False or misleading statement to credit reporting agency, creditor or potential creditor
- New ID/ Alter ID
- Untrue or misleading representations about org.
- Fraud or Deception
- ***Up Front Fees/ Payment in Advance!!***
 - No consideration
 - For any service contracted for
 - Until service is fully performed



CROA: Consumer Rights

○ Right to Cancel

- Before 12am on the 3rd business day after execution
- Without penalty
- Must be written
 - ‘Notice of Cancellation’
 - Must be included with contract
 - Consumer can submit this to cancel contract
 - Or any other written notice



CROA: Consumer Rights cont...

- Sue
- File Complaint
 - SCDCA
 - FTC
 - www.ftc.gov
 - 1-877-FTC-Help



State & Federal Laws Working Together

- Fair Credit Reporting Act (FCRA) = *Federal*
- Financial Identity Fraud and Identity Theft Protection Act (FIFITPA) = *State*



Fair Credit Reporting Act

○ Right to Dispute

● *Consumer Can Dispute:*

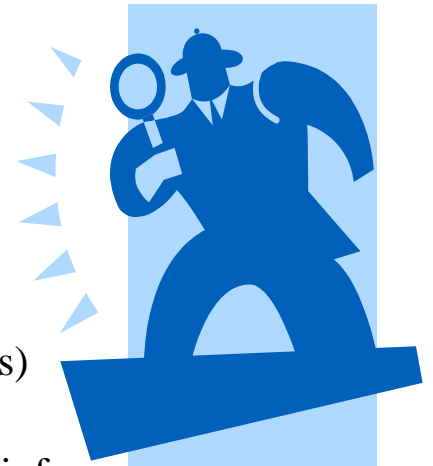
- Inaccurate, incomplete or untimely items
- To credit reporting agency “CRA” and/or
- Furnisher (Creditor)

● *Requirements:*

- CRA - Notify furnisher within 5 days
- CRA & Furnisher - Investigate (unless frivolous)
- CRA & Furnisher - Note File= in dispute
- If no resolution in 30 days, CRA must remove info

● *Resolution*

- Notify consumer within 5 days
- 100 word dispute



FCRA cont...

○ Reporting Periods

- *Bankruptcy*
 - 10 years
- *Civil Lawsuit or Judgment*
 - 7 years or statute of limitations (longer)
- *Paid Tax Lien*
 - 7 years
- *Accounts Placed in Collection OR Charged Off*
 - 7 years (clock begins 180 days after delinquency)
- *Other Adverse Info*
 - 7 years



FCRA cont...

○ Right to Dispute- How?

- Get free credit report—www.annualcreditreport.com
- Letters
 - To Whom?
 - To Credit Reporting Agency AND
 - Information Provider= Creditor
 - What Should Be Included?
 - what information is wrong
 - why it is wrong
 - ask that it should be removed
 - send copies of any papers you have that support your position.



Make copies of the letter and supporting papers for yourself & send certified mail “return receipt requested”.

Financial Identity Fraud and Identity Theft Protection Act (FIFITPA)

Became Effective December 31, 2008

○ Credit Report Disputes

- Mirrors *Fair Credit Reporting Act*
- When inaccurate info on credit report:
 - Write CRA
 - What is wrong in filed
 - Recommend certified mail
 - CRA must confirm or deny inaccuracy within 30 days.





FIFITPA cont...

○ Credit Report Disputes cont...

● If **CRA DENIES** inaccuracy **MUST:**

- Give basis;
- Send copy of file, including which creditors were contacts;
- Give evidence that info is accurate

● If **CRA ADMITS** inaccuracy **MUST:**

- Contact creditors/requestors from the last six months

FIFITPA cont...

○ Credit Report Disputes cont...

- Private Cause of Action
- Department of Consumer Affairs to Enforce
 - Complaints
 - 1-800-922-1594
 - www.scconsumer.gov “Complaint Services”
 - Pattern or Practice





Questions on FCRA or FIFITPA?



Up Next >
Debt
Collection

Debt Collection

- SC & Federal Law Application
- SC & Federal Debt Collection Basics
- Federal Requirements/ Protections
- Proposed Legislation 2010
- Other SC Debt Collection Laws



Debt Collection cont...

○ Application

● South Carolina

- *Unconscionable Debt Collection Practices Act*
 - *Creditors*
 - *3rd Parties*
 - *Repossession Agents*



● Federal

- *Fair Debt Collection Practices Act*
 - *3rd parties*
 - *Creditors incognito*



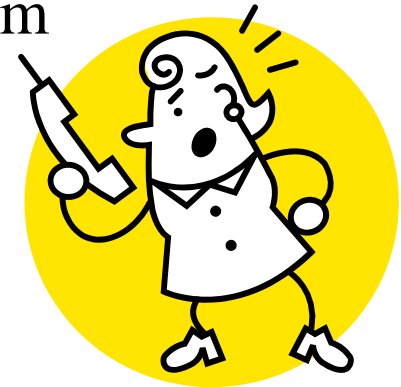
FEDERAL TRADE COMMISSION
FOR THE CONSUMER

Debt Collection cont...

○ State & Federal Law Basics

● Communication

- Via mail, fax, telephone, in person
- Allowed between 8am and 9pm
- Can contact 3rd parties
 - Your phone number
 - Your address
 - Where you work
- Attorney
- Cannot call repetitively in a 24-hour period

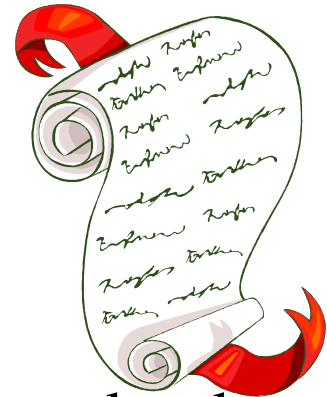


Debt Collection cont...

○ State & Federal Law Basics cont...

● Prohibitions

- Harass
- Obscene/ Profane Language
- False threats
- Misrepresent character, amount, or legal status of the debt
- Communicate via postcard
- Publish list of delinquent consumers
- Depositing postdated check
- ETC



Debt Collection cont...

○ State & Federal Law Basics cont...

● *Stopping Contacts At Work*

- Letter (you or your employer)
 - Cease contact
- Limited Contact
 - Verify employment



TIP: Keep copy for yourself & send certified mail, return receipt requested!

Debt Collection cont...

- Federal Requirements/ Protections (3rd party ONLY!)

- *Stopping Contact*

- At Home
 - Letter
 - Limited Contact
 - No further contact OR
 - Specific action will be taken



***TIP: Keep copy for yourself & send certified mail,
return receipt requested!***

Debt Collection cont...

○ Federal Requirements/ Protections

● *Notice*

- In 1st communication or within 5 days of
- Must Contain:
 - Amount of debt
 - Name of creditor
 - Statements:
 - 30 days to dispute or = assumed valid
 - Verification
 - Name of original creditor



Debt Collection cont...

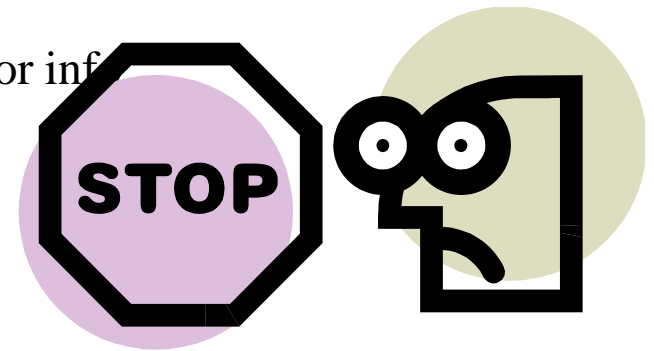
○ Federal Requirements/ Protections cont...

● *Letter*

- Within 30 day period
- Send registered mail, return receipt requested and regular mail
- State that debt or any part of debt is in dispute
 - Ie: Not yours, amount listed is wrong, etc
- Be specific
- Same process for original creditor info

● *Debt Collector Must:*

- Stop attempting to collect
- Must seek **verification**
 - Ie: contract, last billing statement, etc



Debt Collection cont...

○ Proposed Legislation 2010

- *Debt Collection Agency Licensing Act (H4228)*
- *Personal Property Recovery Act (H4284)*
- *Collateral Recovery Act (S1073)*

→ Can be found at
www.scstatehouse.gov



Debt Collection cont...

- Other SC Laws

- *Garnishment*

- Prohibited **UNLESS:**

- \$\$ owed to government
- \$\$ owed for child support
- Garnishment order issued in another state where consumer was a resident



Debt Collection cont...

○ Other SC Laws cont...

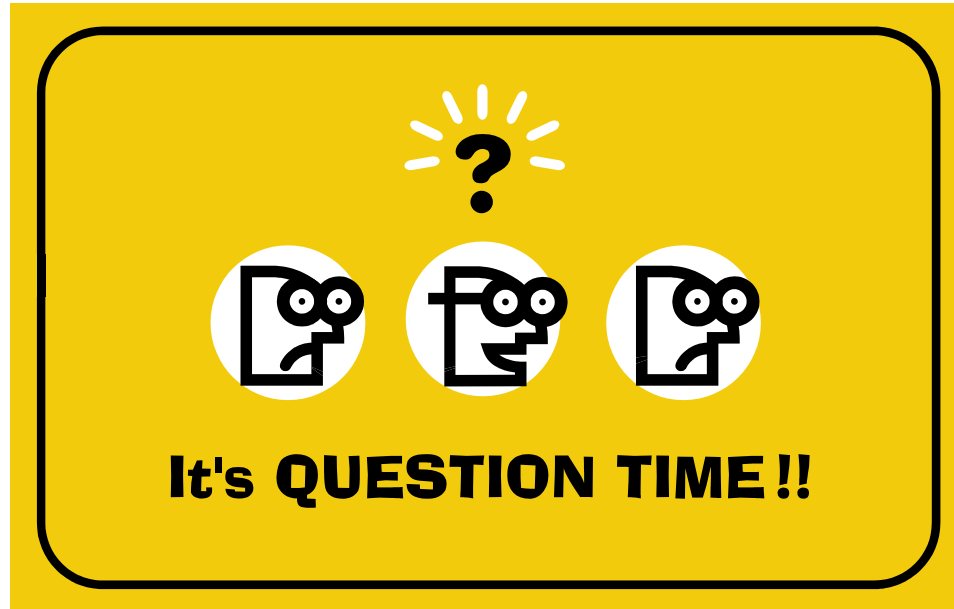
● *Repossession*

● **Right to Cure**

- Missing req'd payment ONLY
- Send after 10 days in default (11th day)
- 20 days from letter to “cure”
- Effect- default never occurred
- Number of notices:
 - Closed ended (auto) = 1
 - Open ended (credit card) 1 every 12 months



Questions on Debt Collection ?



Up Next ~ CARD Act Sidebar

Credit Card Act of 2009

○ Outline

- Legislative Background
- Consumer Protection
- Enhanced Disclosures
- Protection of Young Consumers
- Gift Cards



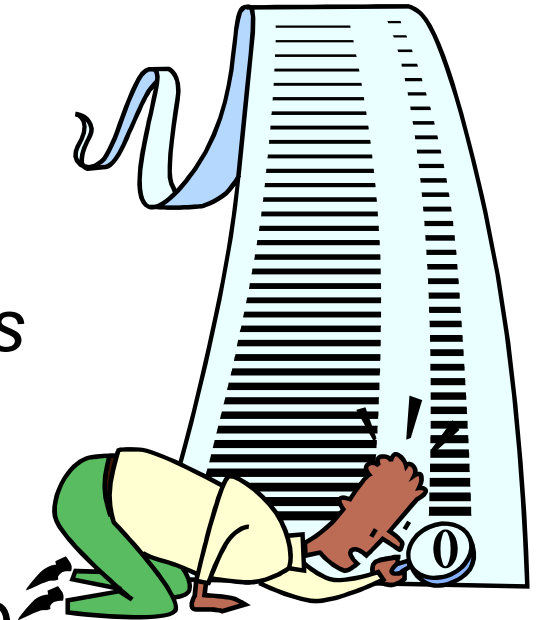
Legislative Background

Names

- *Credit Card Accountability and Responsibility and Disclosure Act of 2009*
- *Credit Card Act of 2009*
- *CARD*
- *Credit Cardholders' Bill of Rights*

History

- Signed into Law ~ May 22, 2009
 - Public Law No.: 111-24



Legislative Background cont...



- Effective Date (s)
 - **9 months of enactment (February 22, 2010)**
 - 15 months of enactment (August 22, 2010)
 - 90 days of enactment (August 20, 2009)
- Governing Agency
 - Board of Governors of Federal Reserve
- Application
 - **“any credit card account under an open and consumer credit plan”**

Consumer Protection

- General Interest Rate, Fees & Charges Provisions
- Interest Rates
- Fees
- Payments



Consumer Protection~ General

- General Interest Rate, Fees & Charges Provisions
 - Written Notice ~ Changes in Terms (Sec. 101)



- 45 days prior to:
 - Annual percentage rate (“APR”) increase OR
 - Other significant changes (defined by Rule)

- Right to Cancel

- Before effective date of change
- Cannot:
 - be considered “defaulting”
 - trigger payment acceleration
 - Charge penalty

**EFFECTIVE DATE: 90 DAYS
AFTER ENACTMENT**

Consumer Protection~ General cont..

EFFECTIVE DATE: 9
Months

○ General cont...

● APR/ Fees/ Charges Increase

- Cannot increase with respect to outstanding balances UNLESS:


- ***Introductory Rate***
- ***Increase in Variable APR***
- ***End of Workout/Hardship Agreement***
- ***60 Days Late***

- APR increase must end no later than 6 months after imposed IF on time payments





Consumer Protection ~ Interest Rates

- APR Increase (Credit risk, market, etc.)
 - If increase due to  :
 - Must give consumer reason for increase
 - Same factors should be considered in reducing APR
 - Account review (January 1, 2009/ every 6 mths)
 - Must reduce APR

EFFECTIVE DATE: 15 Months

- Prohibitions:
 - Cannot increase APR/fees/charges in 1st year
EXCEPT per:
 - Introductory rate, variable APR, Modification, 60 days late (from earlier)

EFFECTIVE DATE: 9 Months

- Promotional APR
 - No increase in APR b4 6 months

Consumer Protection ~ Fees

○ Fees (Sec. 102)

● Over-the-Limit ~ (only applies where FEE involved)

- OPT-In required
 - Express consent
 - *Must remind consumer of right to revoke when fee imposed*



• Fee Rules

- Only allowed 1 per billing cycle AND
- Only 1x during 2 subsequent billing cycles UNLESS:
 - Consumer increased credit line OR
 - Reduced outstanding balance to below credit line

EFFECTIVE DATE 9 Months

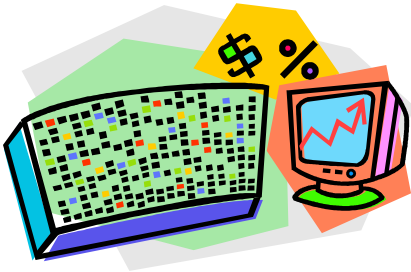
Consumer Protection ~ Fees cont..

○ Fees cont...

EFFECTIVE DATE: 9 Months

● Payment

- No fee based on payment method UNLESS involves expedited service
 - (telephone, online, etc)



● Reasonableness of Penalty Fees/Charges

- Must be ~ (1) reasonable & (2) proportional

EFFECTIVE DATE: 15 Months

Consumer Protection ~ Payments



- Payments (Sec. 104)

- Application of Payments

- Payment due **by 5 pm** on due date
- Due date must be same date each month (Sec. 106)
- Amount received in excess of minimum payment~
 - 1st to balance with highest interest rate
 - THEN order of decreasing interest rate
- Deferred interest arrangement- Amount received in excess of minimum payment~

EFFECTIVE DATE: 9 Months

 - If during last 2 billing cycles of arrangement, to that



Consumer Protection ~ Payments cont...

- Payments cont...

EFFECTIVE DATE: 9 Months

- Fee Harvester Cards (Sec. 105)

- Prohibition Trigger → Consumer fee = >25% of credit limit
 - Consumer cannot pay fee with that card 1st year of use

- Periodic Statements (Sec. 106)

- Must have procedures/policies to ensure mailing or receipt 21 days prior to due date
 - If not, payment cannot be considered late

EFFECTIVE DATE: 90 DAYS

Enhanced Disclosures

EFFECTIVE DATE: 9 Months

○ Payoff Disclosure (Sec. 201)

● **Minimum Payment Warning must be given**

• *Must include the following:*

- If pay current minimum payment only:
 - # of months to payoff balance AND
 - Total costs (*interest and principal)

• 36 month payoff info:

- Monthly payment to payoff in 36 months
- Total costs (*interest and principal)

• *Interest Rate Calculation

- Use rate in effect when given and until paid off
- Same with indexing rate if variable (throughout)



Enhanced Disclosures cont...

- Late Penalties (Sec. 202)
 - *Periodic Statement Must Include:*
 - Payment date
 - Date a late fee will be imposed
 - Amount of late fee
 - If APR will increase if late, **Also:**
 - That fact AND
 - Penalty APR



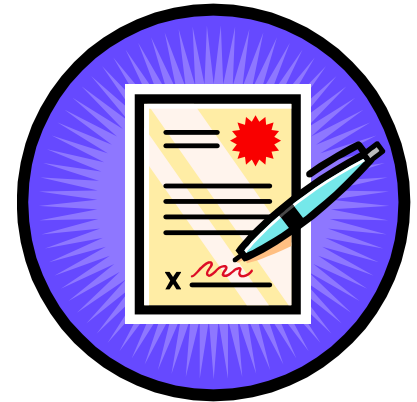
EFFECTIVE DATE: 9 Months

Protection of Young Consumers

○ Restrictions on Credit Cards (Sec. 301)

- Cannot issue to person under age of 21 (“under-ager”) UNLESS:

- Have a cosigner who is:
 - 21 and
 - Able to repay debt and
 - Jointly liable OR
- Under-ager has means of repaying



- Cannot increase credit limit of under-ager with a cosigner UNLESS (Sec. 303):

- Written consent from cosigner to:
 - Increase AND
 - Continued joint liability

EFFECTIVE DATE: 9 Months



Protection of Young Consumers cont...

- Credit Cards and Colleges/Universities

- *Marketing* (Sec. 304)

- Requires disclosure of marketing agreements by college/university
- Prohibits use of student incentives to apply for card if marketing:
 - On campus,
 - Near campus, OR
 - At an event sponsored by or related to the institution



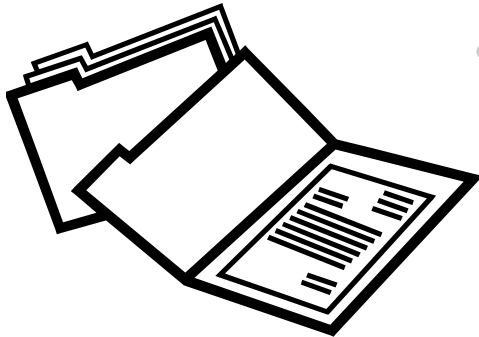
EFFECTIVE DATE: 9 Months

Protection of Young Consumers cont...

○ Credit Cards and Colleges/ Universities cont...

● *Credit Card Agreements*

- Creditor Annual Report to Board (College Affinity Cards)
 - Must include:
 - Terms & conditions of all business, marketing , card agreements to include:
 - Memorandum of understanding between the creditor and organization
 - Amount of payments form creditor to organization
 - No. of credit card accounts covered by the arrangement



**MUST BE SUBMITTED
WITHIN : 9 Months of
Effective Date**



Gift Cards

○ Amending Electronic Funds Transfer Act (Sec. 401)

● Types of Cards

- ***GENERAL-USE PREPAID CARDS***
- ***Gift Certificate***
- ***Store Gift Card***

Gift Cards cont...

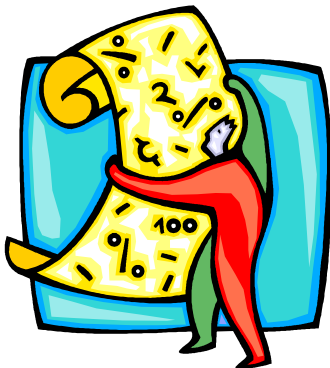
• Restrictions

EFFECTIVE DATE: 15 Months

• ***Fees***

- May not impose a fee on the cards UNLESS:
 - No activity in a 12 month period AND
 - Met disclosure requirements (Clear & conspicuous):
 - The fee may be charged;
 - Amount of fee;
 - How often it may be assessed;
 - That a fee may be assessed for inactivity
- Not more than 1 fee charged per month AND
- Whatever else the Board sets by Rule

*Issuer must notify
consumer of fees
before purchase~



Gift Cards cont...

- Restrictions

EFFECTIVE DATE: 15 Months

- ***Card Expiration***

- Cannot sell/issue card that expires UNLESS:
 - Exp. Date is 5 years or more down the road AND
 - Terms of expiration are clearly stated

- ***Current SC Law:*** *

- Expiration = 1 year UNLESS in 10 pt font on front of card
- Conditions/fees must be on certificate, cover or receipt



Resources

- CARD Act:


- <http://www.govtrack.us/congress/bill.xpd?bill=h111-627>



- CARD Act Fact Sheet

- http://www.whitehouse.gov/the_press_office/Fact-Sheet-Reforms-to-Protect-American-Credit-Card-Holders/

Resources cont...



Board of Governors of the Federal Reserve System

The Federal Reserve, the central bank of the United States, provides the nation with a safe, flexible, and stable monetary and financial system.

- <http://www.federalreserve.gov/>



FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

- <http://www.ftc.gov>



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803-734-4297



Toll Free: 1-800-922-1594

Fax: 803-734-4229

www.scconsumer.gov